# FACTS

## YOU NEED TO KNOW

## CRISIS NURSERY

*Board of Directors*

# Table Of Contents


Introduction ..... *ii*

Board of Director Statement (LIC 165 (7/05)

Corporations ..... 1

Board of Directors Duties..... 3

Standard of Care..... 5

Composition of the Board ..... 6

Conflict of Interest..... 7

Board of Directors Meetings ..... 11

Officers..... 12

Board of Directors Best Practice Guidelines ..... 13

Overview of Community Care Licensing and of Licensing Requirements..... 16

Important California Laws and Regulations..... 20

Resources ..... 21

Index of the Questions and Answers..... 22

# Introduction

The California Department of Social Services licenses crisis nurseries and oversees an array of programs that provide care, supervision, and services for children at risk. The Department's goal is to protect the health and safety of the children who live in crisis nurseries. The purpose of the booklet is to provide all crisis nursery boards of directors information about their duties and responsibilities and to enhance their knowledge regarding the operation of crisis nurseries.

This booklet is being provided to all crisis nursery boards of directors. The Department believes that this information is so important that it must be read by every crisis nursery board member. All crisis nursery board of director members must sign a statement that they have read this booklet. This statement is located on the next page as form LIC 165 (7/05) a Board of Director Statement.

This booklet is designed to provide the basic laws for California nonprofit corporations. However, this information serves only as a guide. For more complete information, please refer to the California Corporations Code or contact your attorney or legal resource and referral agency. Do not rely on this booklet for all of your responsibilities as a member of the board of directors. You may want to review some of the resources shown on page 21 for assistance.

As a member of the board of directors, you must be familiar with these rules. Knowledge of these rules is important when making decisions. When you make decisions, it is also important to know the kinds of children that are placed in your facilities. Many of these children have special emotional needs, problems with learning, medical problems, and may have been abused or neglected.

It is very important that you understand what is in this booklet. If you have any questions about crisis nursery rules, you may call your local licensing regional office to request information. Or you may refer to your local telephone directory under California State Government for the telephone number of your local Community Care Licensing Regional Office to call for assistance.

# BOARD OF DIRECTORS STATEMENT

**IMPORTANT** - Before completing, see Page 2 for instructions.

***Licensees are required to provide a copy of the Community Care Licensing's publication, Facts You Need To Know, Crisis Nursery Board of Directors, to each member of their board of directors. The members of the board of directors are required to read and sign the statement below. This form must be completed by all board members. The signing of this form by all members, and prospective members, or the board of directors is a condition of licensure.***

I have read and understand my legal duties and obligations as a member of the board of directors and I also understand that the crisis nursery operation is governed by laws and regulations that are enforced by the Department of Social Services, as set forth in the publication, Facts You Need To Know, Crisis Nursery Board of Directors.

**I declare that I have received a copy and I have read and understand the information contained in the publication, Facts You Need To Know, Crisis Nursery Board of Directors**

1. Facility Name _____ 2. Facility Number _____

3. Your Name (Print Clearly)_____ 4. Daytime Telephone No. _____

5. Your Mailing Address _____ 6. City _____

7. State _____ 8. Zip _____

9. Signature _____ Date _____

*Note: The publication, Facts You Need To Know, Crisis Nursery Board of Directors booklet is only as current as the initial publishing date or any later revision date. Therefore, the booklet may not include information on the most current law and regulation changes that you may need to know. Boards of directors should ensure that they are informed of law and regulation changes.*

# BOARD OF DIRECTORS STATEMENT
# INSTRUCTIONS

## General Information

As stated on the front side, each member of the board of directors must sign this form. Also, prospective board members must read the Board of Directors booklet and sign this form before joining the board. This form may be copied and given to each of your members for their signature. The signed forms must be kept at the crisis nursery administrative office. The signed forms must be available to licensing staff for inspection upon request.

## Instructions

Please type or clearly print the information being requested by each item number.

| | |
|---|---|
| Items 1. and 2. | Enter the facility name and number. When a corporate licensee has more than one facility, it is important that the same facility number is used for all board members. This ensures that each and all board members are associated and identified with the correct corporate licensee. It is acceptable to enter this on behalf of the board member. |
| Items 3. - 10. | The board member enters his or her name, daytime telephone number, complete mailing address, signature and date. **All signatures must be original.** |

# Corporations

A corporation is a distinct legal entity under California law. A new corporation is born when its Articles of Incorporation are filed with the Secretary of State. A corporation is not a business owned and operated by individuals but by the board of directors. A nonprofit (public benefit) corporation is different from a for-profit corporation. A for-profit corporation has owners whose goal is to create a profitable return. A nonprofit corporation is created for charitable or educational purposes, (i.e., to benefit the public at large and not for personal gain). In the case of a crisis nursery nonprofit corporation, charitable purposes would include providing shelter, care and guidance to abused, neglected, or at risk children. The basic steps and minimum requirements for forming a nonprofit corporation are summarized in the question and answer format below.

## Frequently Asked Questions

### *How is a nonprofit corporation formed?*

Incorporating a nonprofit organization and obtaining tax exemption involves the following:

- ❑ Prepare articles of incorporation and file them with the Secretary of State.
- ❑ Prepare organization bylaws.
- ❑ Conduct an initial meeting of the board of directors. *(Agenda items usually include adopting bylaws, electing officers, and planning a budget)*
- ❑ Apply for federal tax exemption from the Internal Revenue Service.
- ❑ Apply for state tax exemption from the Franchise Tax board.

### *What are Articles of Incorporation?*

This document gets the organization started. The articles of incorporation must at minimum include: 1) the official name of the corporation, 2) a statement that the corporation is a nonprofit corporation and, 3) the name and address of a person in California who will accept legal notices (California Corporations Code Section 5130). There is more required information, which, if not included in your articles of incorporation, must be included in the bylaws.

### *What are Bylaws?*

The bylaws provide the rules for governing and operating the corporation (California Corporations Code Section 5151). If you have this information in your articles of incorporation, you do not need bylaws. However, if you make any changes to your articles of incorporation, you must file the changes with the Secretary of State. Bylaws must state the number of directors of the corporation unless it is stated in the articles. Unless restricted by law or the articles of incorporation, the board of directors can set, adopt and amend bylaw provisions. The following are typical provisions included in bylaws:

- ❑ The time, place, and method used to call meetings of members, directors, and committees.
- ❑ The duties, powers, method of election and qualification of directors.
- ❑ The length of directors' terms.
- ❑ The manner of appointment, duties, compensation, and the length of officers' terms.
- ❑ The requirements of reports to members.
- ❑ The rules for admitting and removing members.
- ❑ The appointment and authority of committees.
- ❑ The special requirements for the percentage of member and director votes needed to take certain actions.
- ❑ The number of directors needed to make a quorum.

### *Where do I keep my Articles of Incorporations and Bylaws?*

Current copies of the articles of incorporation and bylaws must be kept at your principal California office (California Corporations Code Section 5160). A copy of the bylaws and articles of incorporation should be kept up to date by filing copies of amendments as they are adopted by resolutions of the board of directors (California Corporations Code Sections 5215 and 5810-5820).

### *What is a Board of Directors?*

The board of directors ("board") is the governing body of the corporation. The board consists of persons named in the articles of incorporation or bylaws or elected by the creators of the corporation and later board members to act as members of the board.

# Board of Directors Duties

The directors are given the authority and responsibility for managing the nonprofit corporation. The directors meet and make decisions together as the board of directors ("board"). The board is ultimately responsible for making sure a corporation is run properly. If it fails to do this, individual directors may be responsible.

All corporate powers are exercised under the board's direction (California Corporations Code Section 5210). While certain powers may be assigned to committees, officers, or employees, their use of that power and their actions are subject to the board's review, direction and control.

As a practical matter, the day-to-day activities should be assigned to a particular staff member, sometimes called an Executive Director, or to an administrator. While some important decisions may be delegated, those decisions must be reviewed and approved by the board. The board cannot simply give power and responsibility to the Executive Director and/or staff. The board and each director have a special legal relationship to the corporation. This is called a fiduciary relationship. As fiduciaries, directors must place the interests of the corporation before their own or others' interests. To protect the corporation's interest, the board must guard against harm to the corporation caused by any unfair or unreasonable transactions, conflict of interest or self-dealing transactions. To accomplish this the board must take an active role in overseeing the corporation.

The following are some specific duties of the board of directors:

- ❑ Make and approve long-range goals and objectives.

  *Actively participate in the making and authorizing of the corporation's long-term direction; approve or delegate approval of annual objectives and priorities established to achieve long-range goals.*

- ❑ Develop a financial plan to ensure that there are adequate funds to pay expenses and long-range goals and objectives.

  *This could include fund raising to supplement your program.*

- ❑ Make and adopt policies.

  *Establish the limits of the Executive Director's authority to budget, administer finances and compensation, establish programs, and otherwise manage the corporation.*

# Board of Directors Duties

- ❑ Select, employ, assess and, if necessary, dismiss the Chief Executive Officer.

  *Provide support, comments and criticism, when needed; hold the staff accountable for carrying out plans and policy decisions; provide a formal performance review and appraisal.*

- ❑ Adopt and monitor the corporation's operating budget, financial development plan and insurance program.

  *Review and understand the financial statements on a regular basis to ensure the financial health of the corporation and that the corporate funds are being spent appropriately and in accordance with the board's financial plan and budget.*

- ❑ Perform its legal responsibilities.

  *To act for the corporation as outlined in the articles of incorporation, constitution and/or bylaws.*

- ❑ Protect the assets of the corporation.

  *Ensure that no board members, management, or staffs are overpaid or unfairly or unreasonably profiting from business dealings with the corporation. Ensure the corporation's equipment is not being misused. Ensure all important purchases and leases have fair and reasonable terms, and represent the best deal possible to the corporation.*

- ❑ Board development (recruiting, orienting and assessing the board).

  *Aside from attending board meetings, it is also recommended that directors take the time to get to know the facility. Conduct regular on-site facility visits. When appropriate, take the time to talk with the children and staff. This hands-on approach will provide valuable information about the operations of the facility.*

# Standard of Care

Directors must perform their duties in the following manner:

- ❑ The duties must be performed in good faith;
- ❑ The duties must be performed in a manner which the director believes to be in the best interest of the corporation; and,
- ❑ The duties must be performed with such care, including reasonable inquiry, required under the circumstances (California Corporations Code Section 5231).

To perform duties in good faith, the director must honestly evaluate situations. Decisions and actions must be in the best interest of the corporation (which exists to benefit the children), not the interest of any other person or entity. Directors are expected to attend board meetings as well as read and understand material sent to them. If there is something you do not understand or does not seem right, then it's your responsibility to make a reasonable inquiry, ask questions about it and discuss these issues with the other directors. Directors must carefully and honestly review transactions involving the corporation and other parties. Directors must ensure transactions are fair and reasonable and in the corporation's best interest, not the best interest of someone else. This honest review, inquiry, and protection of the best interests of the corporation is particularly important when the board is asked to review transactions involving the corporation and other parties.

# Composition of the Board

While it is convenient to have employees or their relatives on the board, it is not always in the corporation's best interest because these individuals are likely "interested persons." There is a built-in conflict of interest if too many directors receive money from the corporation or if too many directors are related to employees of the corporation.

No more than 49% of the board of directors may be ''interested persons." "Interested persons" include any director who has received payment for services rendered within the past 12 months whether as an employee (full or part time), independent contractor, or otherwise. If a director is related to anyone who has received payment from the corporation, that director may be an "interested person" (California Corporations Code Section 5227)

There is a good reason for this rule. Directors may have to decide whether to use corporate money for their own payment (or other interests) or for the corporation's charitable purposes. By limiting the number of "interested persons'' serving as directors, the corporation limits the potential for self-dealing transactions and other conflicts of interest.

*Frequently Asked Questions*

***If I have seven board members, how many can be "interested persons"?***

A maximum of three persons. The remaining four board members cannot be paid by the corporation in a non-director capacity or be related by blood or marriage to any other person paid by the corporation in a non-director capacity.

***What can be done to prevent the board of directors from having too many "interested persons"?***

To ensure that no more than 49% of the board is composed of "interested persons" at least once a year the corporation should determine if any director has received payment during the past year and if any director thinks they may receive payment for the coming year. The corporation should also determine if any director's relative has or will receive payment for services rendered. If there are more than 49% ''interested persons" serving as directors, the board must correct the situation. To balance the percentage, the board can remove or replace ''interested persons'' or add non-interested persons so long as the action and total number of directors is allowed by the bylaws.

***Is a director considered an "interested person" if they receive reimbursement for actual costs incurred while performing their duties as directors?***

No, this is not considered payment for purposes of identifying the number of "interested persons."

# Conflict of Interest

When a board or staff member has an interest that may affect his or her ability to put the interest of the corporation before their personal interest, conflict of interest exists. Because directors (and their family and friends) are likely employed outside of the board and are associated with organizations in their communities, it is not unusual for actual or potential conflict of interest to arise.

Directors must follow specific procedures in approving transactions involving the corporation and one or more directors who have a material financial interest in the transaction, as is the case in a self-dealing transaction.

### *Self-dealing Transaction*

A "self-dealing transaction" is a conflict of interest where the corporation and a director are parties in a transaction where the director has a "material financial interest" in the transaction (California Corporations Code Section 5233). Any director who has a "material financial interest" in the transaction is an "interested director" and he or she has a duty to disclose the interest in the transaction to the board.

Any financial interest is "material" if it is large enough to create an appearance of a conflict of interest. Actual conflict is not required to trigger the duty to disclose to the board. So the director must honestly disclose any potential interest and let the board make a determination.

> ***Example:*** Self-dealing transactions between a corporation and director include the renting or selling of real property (house, structure, land, etc.); the renting or selling of personal property (furniture, appliances, office equipment, etc.); contracting for services; payment of a salary to an employee who is also a board member; and any transaction where a director may earn a commission.

Transactions involving a third party such as a director's spouse, other relative, or an entity (partnerships, corporations, or trusts) with which the director or relative is associated, may also be self-dealing situations. It may not be obvious that a director or relative is affiliated with the entity. So, all possible associations must be reported by a director to the board. The board must then determine whether a self-dealing transaction exists. The board decides if the self-dealing transaction is unfair to the corporation. The board must not enter into an unfair self-dealing transaction. If in doubt as to whether a self-dealing transaction exists, treat it as a self-dealing transaction or seek legal advice.

# Conflict of Interest

*Frequently Asked Questions*

### *What happens when an unfair self-dealing transaction occurs?*

When a transaction unfair to the corporation occurs, the charity suffers damage to its assets. The Attorney General, and others, may sue the responsible directors for damages to the corporation, plus interest, and in some cases punitive damages. Often the self-dealing directors and other responsible directors are removed from the board of directors.

### *How do I know if staff are being paid fairly?*

There is no precise formula to evaluate staff compensation. Based on the following questions, does the employee's pay appear to be fair and reasonable to the nonprofit corporation?

- ❑ How much does staff (including the executive director and program administrator) get paid?
- ❑ Are there other monies or things of value (such as reduced time schedule, overtime pay, benefits, bonuses, or the use of a car) given to staff in addition to wages?
- ❑ How was the compensation determined?
- ❑ What are the job duties of the staff person?
- ❑ How qualified and experienced are the staff?
- ❑ What do other similarly situated staff who work in similar sized nonprofit businesses earn? (Refer to Nonprofit GENIE web site, http://www.genie.org/)
- ❑ Can the crisis nursery hire and retain quality staff?
- ❑ What percentage of operating expenses goes for employee compensation?

### *Can a board ever approve a self-dealing transaction?*

Not all self-dealing transactions are necessarily bad or unfair to the corporation. There may be cases where the self-dealing transaction benefits the corporation.

> ***Example:*** If a director contracts to rent real or personal property or to provide services at a fair price, if the terms of the contract are fair and reasonable to the corporation, if the contract is for the corporation's benefit (not the director's benefit), and if the corporation could not have obtained a better arrangement with reasonable effort under the circumstances, there is not likely to be any damage to the corporation from the self-dealing transaction.

A board may approve or “validate” a self-dealing transaction if, before entering the transaction or any part of it, all of the following are found to be true:

1. The corporation entered into the transaction for its own benefit and not for the benefit of the interested director;
2. The transaction was fair and reasonable to the corporation at the time the corporation entered into it;
3. Before approving the transaction, the board considered alternative arrangements and in good faith found, after reasonable investigation, that a more advantageous arrangement under the circumstances from disinterested parties could not be found; and,
4. The board approved the transaction with knowledge of the director’s interest and by a majority vote of the directors then in office, excluding the vote of the interested director(s) (California Corporations Code Section 5233).

If the directors have all of the facts before them, and find all of the above to be true, they may “validate” a self-dealing transaction. Before validating a self-dealing transaction, the directors must exercise due diligence in making sure the transaction is fair and reasonable to the corporation.

### *What is “Due Diligence”?*

In exercising due diligence, the directors must conduct a reasonable investigation into the facts. For example, assume the corporation is considering hiring one of its directors to perform bookkeeping services. An independent person or committee should be appointed to conduct an investigation into the facts. At a minimum, the facts considered should include what bookkeeping services are required and what other bookkeepers charge for similar services. The fair market rates should then be compared to that of the “interested director.” The directors must review in good faith all the information gathered by the independent investigation, and all other relevant information, and ask all necessary questions in order to make an honest and informed decision. This review and comparison will indicate to the board whether the transaction is "fair and reasonable" to the corporation.

As a practical matter, thorough and complete board minutes should be kept of any board meeting where a self-dealing transaction is reviewed and approved. All information gathered by the independent review and any written reports relied upon by the directors should be included or attached to the minutes.

The actions of the board must appear proper; the intent must be proper; and the outcome must be in the best interest of the corporation. If these actions are not performed, the transaction could project the appearance of fraud and collusion by the directors, and all directors could be held liable for damages to the corporation.

### *What are some other examples of transactions that may be improper?*

A loan made by a corporation to a director, officer, or relative of either, or a third party associated with those persons, may be improper. Directors may be held personally liable for making a loan of charitable assets. Prior approval from a court or the Attorney General is required for most loans from a public benefit corporation to an officer or director (California Corporations Code Section 5236).

Certain distribution of corporate assets is prohibited, such as: (1) transfers of corporate funds or assets to directors, officers, or members without fair consideration; (2) payment of excessive or unauthorized salaries or "bonuses"; (3) improper gifts of charitable assets to individuals; and (4) other uses of corporate assets unrelated to carrying out the charitable purposes of the corporation. A director may be personally liable for making or receiving a prohibited "distribution" of the public benefit corporation's assets.

# Board of Directors Meetings

Board of directors meetings must be held regularly. At these meetings, the board of directors shall review and discuss licensing reports (e.g., Compliant Report and Facility Evaluation Report), financial and program audit reports of its crisis nursery(s) operations, incident reports filed by the crisis nursery with Community Care Licensing, and any administrative action against the licensee or its employees. It is acceptable to designate a board committee to review these documents and provide a full report to the board of directors. However, any discussions involving specific children living in the crisis nursery or specific employees must be kept confidential. Their names should not appear in the minutes. The minutes shall reflect the board's discussion of these documents and the crisis nursery's operation.

*Frequently Asked Questions*

### *Where can board of directors meetings be held?*

Board of directors meetings can be held anywhere stated in the notice, bylaws or board resolution. If the meeting place is not stated in any of these ways, then it must be held at the principal office of the corporation.

### *How many votes are required for a decision of the board to be official?*

In order for any act or decision of the board of directors to be official, it must be voted on by a quorum. A quorum is the number of members necessary to take action at a meeting (California Corporations Code Section 5211). The quorum may be stated in the articles of incorporation or bylaws and must meet the legal rules. A quorum can never be less than the majority of directors present.

### *Must we keep minutes of our board meetings?*

Yes, a nonprofit corporation must keep a written record of the meetings of its board and committees of the board (California Corporations Code Section 6320). In addition, the minutes of the board meetings must be made available to California Department of Social Services staff upon request. The law requires the minutes to contain enough information to make a clear written record for future use. The primary purpose for keeping minutes is to have documentation that explains the actions of the board, which can later be used to defend their actions. Although minutes need not be a word-for-word record of everything said at a board meeting, they must present an accurate record of what was done, such as time, place, who was present, what was discussed, results of all votes taken, and what decisions were

# Meetings

made and why. Also, any documents the board or committee uses to make decisions (including financial statements) should be attached to the minutes if they are not confidential. If these documents are confidential, they must be clearly identified in the minutes. However, if the documents are usually a part of the corporation's permanent records, they must either be attached to the minutes or clearly identified in the minutes.

### *Must we keep minutes of committee meetings?*

Yes, if the committee is acting on behalf of the board of directors, such as an executive committee.

### *Who can take the minutes?*

Usually the Secretary of the corporation is responsible for preparing the minutes and distributes them either in advance of the next board meeting or at the meeting. A vote to approve the minutes is required only when board members want to make changes to the minutes as presented by the Secretary. Lastly, the minutes should be certified by the Secretary (California Corporations Code Section 5215).

# Officers

California nonprofit corporations must have three officers: a President (Chairman of the Board), a Secretary, and a Chief Financial Officer (Treasurer) (California Corporations Code Section 5213). Officers (president, vice president, secretary, and treasurer) are in charge of carrying out the day-to-day business of the corporation. Their powers, duties and responsibilities are set by the articles of incorporation, bylaws, or by resolution of the board of directors. Officers owe a fiduciary duty to the corporation and must act honestly and in the best interest of the corporation.

*Frequently Asked Question*

### *Can one person serve as the Secretary and Treasurer?*

Yes, one person may fill one or more of the officer positions. However, the person or persons who hold(s) the offices of Secretary and Treasurer cannot also be President.

# Best Practice Guidelines

The responsibilities of the board of directors of a non-profit corporation are fairly well defined. What can be unclear is how board members are to meet their responsibilities. The following are a few suggestions to have an effective board of directors that practices good governance and oversight of the agency. Boards of directors vary in size and are responsible for governing agencies that serve varying types of children. This requires flexibility in how boards are structured and how they fulfill their responsibilities. The following answers to frequently asked questions summarize some good business practices for a board of directors.

*Frequently Asked Questions*

***What orientation methods can be used to familiarize potential and new members to the board and the agency?***

- ❑ Develop a board manual of materials that includes the following items: introduction letter, mission statement, description of program(s), bylaws, list of board members, list of board committees, board calendar, last meeting minutes, and the most current audit reports (Refer to the list at the end of this section for other suggested information).
- ❑ Interview current board members.
- ❑ Tour the agency.
- ❑ Visit and talk to staff and children.

***What are some strategies for creating and keeping a strong board?***

- ❑ Recruit persons with the experience and education the board needs (e.g., accountant and mental health professional).
- ❑ Orient and train new and existing board members.
- ❑ Assess how well the board and the individual members are meeting the needs of the corporation.
- ❑ Stagger board members' terms to bring fresh ideas and skills while maintaining consistency.

# Best Practice Guidelines

### *What are some strategies for effective, productive board meetings and involved board members?*

- ❑ Provide notification of meeting and agenda items in advance to all board members and require a response from each indicating whether he or she will attend.
- ❑ Identify issues and recommendations of major agenda items.
- ❑ Designate a timekeeper, if needed, to keep the meeting on track, particularly with controversial agenda items.
- ❑ Follow rules to maintain an orderly meeting, (e.g., Robert's Rules of Order.)
- ❑ Establish committees among board members to deal with personnel issues, nominations for board members, and other ongoing functions.
- ❑ Have board retreats or annual meetings to develop a strategic plan for the agency (should invite agency staff members).
- ❑ Invite board members to agency functions.
- ❑ Solicit input from "silent" members.
- ❑ Have breaks during the meeting.
- ❑ Provide refreshments, breakfast, or lunch.

### *How can the board meet its duty to review licensing reports, financial reports, and incident reports at the meetings?*

- ❑ Attach the reports to the agenda, if feasible, or summarize incident reports.
- ❑ Reflect discussion in the minutes.
- ❑ Designate an individual or committee that reports to the Board.
- ❑ Obtain training on evaluating and understanding financial statements.

### *How can the board ensure that the agency follows California Department of Social Services (CDSS) regulations?*

- ❑ Invite representatives of the Department for updates at board meetings.
- ❑ Review program and fiscal audits reports.
- ❑ Visit the facility; talk to staff and children.
- ❑ Obtain current copies of the program statement and applicable CDSS regulations.
- ❑ Attend CDSS sponsored trainings or seminars.

# Best Practice Guidelines

***What other practices should board members consider?***

- ❑ Evaluate the Executive Director annually.
- ❑ Attend meetings regularly and record attendance or absence, include reasons for absence.
- ❑ Obtain Director's and Officer's insurance.
- ❑ Obtain and review the Attorney General's Guide for Charities.
- ❑ Be familiar with the organization's articles of incorporation and bylaws.
- ❑ Require dual signatures, when feasible, on all bank accounts.
- ❑ Ensure objections to board decisions are reflected in the minutes.
- ❑ Have professional members and community representatives on the Board to contribute their knowledge and experience.
- ❑ Attend workshops and conferences for non-profit corporations.
- ❑ Evaluate the board of directors.

One of the best methods to be an effective and responsible board member is to keep informed about the organization in order to make knowledgeable decisions. The list below contains suggested items to include in a board manual.

1. List of current board members' telephone numbers, addresses, and their committee assignments.
2. Board calendar with important dates.
3. List of current agency staff and their responsibilities.
4. Organizational chart.
5. Agency bylaws.
6. Recent financial audit, balance sheet, operating statement, and other financial statements.
7. Recent reports to funding sources, and a list of all funding sources.
8. Minutes of recent Board meetings.
9. Update on current programs and projects.
10. Program statement, which outlines services to children.
11. Guidebook for crisis nursery providers (Establishing and Maintaining Positive Relationships in the Community).
12. Staff personnel policies manual.
13. Accounting procedures manual.
14. Other written policies as appropriate to exercise oversight without micromanaging the agency.

# *Overview of Community Care Licensing*
# *Requirements*

The Community Care Licensing Division (CCLD) is the state agency responsible for licensing and monitoring all crisis nurseries. These responsibilities are accomplished by on-site visits to crisis nurseries performed by licensing staff from regional offices located throughout California. The purpose of these visits is to ensure that crisis nurseries follow the relevant regulations contained in the California Code of Regulations, Title 22, Division 6, Chapter 7.5. It is the responsibility of board members to be generally familiar with these regulations. Knowledge of the regulations will be important when making decisions about the crisis nurseries operations.

To obtain a copy of the regulations:

- ❑ Ask your administrator for a copy of the regulations that should be kept in each facility; -or-

- ❑ Access the regulations and the Health and Safety Code on the World Wide Web from the California Department of Social Services' web site, http://www.dss.ca.gov/ -or-

- ❑ Obtain copies of the regulations and/or the Health and Safety Code by contacting:
  Barclay's West Group
  (800) 888-3600

This section of the crisis nursery booklet provides a general overview of Community Care Licensing and board members' responsibilities. This overview of Community Care Licensing does not explain every law and regulation that may apply to crisis nurseries. However, the following information gives a general idea of the required basic services to be provided by a crisis nursery and the resources available through Community Care Licensing to assist with compliance.

# Overview of Community Care Licensing Requirements

*Frequently Asked Questions*

### *Who is Community Care Licensing?*

Community Care Licensing (CCL) is a division of the California Department of Social Services (CDSS). The mission of CCL is to ensure the health, safety and well-being of children, adults and elders in out-of-home care through the enforcement of licensing requirements found in California Code of Regulations (CCR), Title 22. Licensing staff throughout the state are responsible for processing applications for licensure, performing unannounced licensing visits, responding to complaints that licensing regulations are being violated, developing plans to correct problems and violations, and helping crisis nurseries follow regulations.

### *How does the licensing agency monitor compliance?*

The licensing agency makes unannounced visits to all crisis nurseries facilities. During the visit, all records pertaining to staff, children and administrative requirements are reviewed. Based on a review of the crisis nursery program statement, staff and children are interviewed to ensure the program described is in place and services are being provided. All buildings, grounds, equipment and furnishings are reviewed to ensure that they are clean, sanitary, sufficient in quantity, and in good repair. In addition, the following are all reviewed for facility compliance: emergency plans; discipline policies; activity programs; visiting policies; neighbor and child complaint policies; personnel policies; job descriptions; resident roster; medication records; Board of Directors meeting notes; staff training plan; resident accounting records; and staff criminal record clearances. At the conclusion of the review, licensing staff prepare a written report, which is discussed with the appropriate facility staff persons. Any areas that do not meet requirements are cited and a manner and time for correction is agreed to. A follow-up plan of correction visit is made to ensure that all cited requirements have been corrected.

In addition, an unannounced visit is made to a facility when the licensing agency receives a complaint against the facility alleging that violations of the licensing regulations or law have occurred. The complaint visit will occur within 10 days after receipt of a complaint to investigate whether the allegations are true. At the end of the investigation, licensing staff prepares a written report. If a complaint is found to be true, all items violating regulations and/or law are cited, and a manner and time for correction are agreed upon. A follow-up plan of correction visit is made to ensure that violations have been corrected.

Facility staff should forward copies of written reports discussed above to the board for its review. This notification will assist the board in its general supervision of the crisis nursery's operations for which it is accountable.

### *What can happen if a licensee violates licensing requirements?*

When a licensee has violated a regulation, law or engaged in activities that endanger the health and safety of children in their care, the Department can take action against the licensee (Health and Safety Code Section 1549). The Department's enforcement options are not limited to those listed below.

- ❑ Civil Penalty – The licensing agency, at the time of the follow-up visit, can levy a civil penalty against a licensee when areas that do not meet requirements are not corrected within the time specified in the plan of correction agreed to by the licensee. The licensing agency may levy a penalty against a facility in the amounts of $50, $100 or $150 per day.

- ❑ License Revocation – The Department can revoke a crisis nursery license when the licensee commits serious regulation violations, or engages in criminal conduct, or repeatedly violates licensing regulations despite multiple citations, plans of corrections, civil penalties, informal meetings, and a noncompliance conference. The licensee has a right to request a hearing before an Administrative Law Judge to appeal the revocation action. The facility may continue to operate until a Final Decision and Order revoking the license has been adopted by the Department.

- ❑ Temporary Suspension Order (TSO) – The Department can issue a facility with a TSO when a licensee, or other person in a facility has engaged in physical or sexual abuse of clients, or has seriously neglected clients in care, or has been convicted of a nonexemptible crime, or has so poorly supervised the clients in care that there is a substantial risk to their health, welfare, or safety. The TSO will specify an effective date when the operation of the facility must cease. The licensee has a right to request a hearing before an Administrative Law Judge to appeal the TSO action.

### *How does the corporation become a licensee?*

The board of directors sends a designee and administrator to attend an orientation and participate in a three-step application process. During this process a completed application is submitted and reviewed for compliance by the local licensing office staff. In addition, a fire clearance approval is obtained from the local fire department, other local approvals that may be required are received, corporate assets are confirmed, and criminal record clearances are completed. After licensing staff make a site visit to the facility to confirm that the facility and furnishings/equipment are in place and in good order, and after all clearances are received and all documents are reviewed for compliance, a license to operate is issued to the corporation. A corporation may apply for more than one crisis nursery license. Each application submitted will go through the same process before a license to operate is issued.

### *When can the facility begin operating?*

It is against the law for a crisis nursery to begin operation without a license. Each crisis nursery operated by the corporation must have a license issued before the facility is allowed to begin operation. In addition, a rate application must be submitted to the Foster Care Rates Bureau to assign a RCL and rate before the crisis nursery can receive foster care funding for children in placement.

### *As a board member, am I responsible for the facility's day-to-day operation?*

No. The day-to-day operations are the responsibility of the Executive Director and other staff employed by the crisis nursery. As with all businesses, a facility and program are only as good as the staff who run them. However, the board is accountable for the general supervision of the crisis nursery, the establishment of policies concerning its operation, and for ensuring that finances are appropriately managed. The Department can prohibit an individual from serving as a board member, or can require removal of a board member, if it is documented that the board member improperly used or stole clients' monies or willfully failed to provide services to clients. In addition, the board is responsible for finding ways to address problems identified in licensing reports, audit reports, incident reports and administrative actions. The law requires the board to meet quarterly to discuss these documents.

### *Where can I get copies of licensing evaluation reports?*

You can get a copy of any licensing report from either the Administrator of your crisis nursery or from your local licensing regional office.

### *What happens if we have to move to another location or we want to add another facility?*

Crisis nursery licenses are not transferable either to a new licensee or to a different/additional location. Therefore, when a move or expansion is being considered, allow time for a full application to be submitted and processed. In addition, you need to submit a rate application to the Foster Care Rates Bureau in order to attach and receive the program's current RCL and rate for the new or expanded facility.

# Important California Laws and Regulations

The California Legislature has enacted many statutes that apply to crisis nurseries providers and nonprofit corporations. This summary includes some of the most important of these laws and regulations addressed in this booklet.

## CALIFORNIA CORPORATIONS CODE

### ORGANIZATION AND BYLAWS

1. Formation .....5120-5122
2. Articles of Incorporation .....5130-5134
3. Amendment of Articles of Incorporation ..... 5810-5820
4. Powers .....5140-5142
5. Bylaws ..... 5150-5153
6. Location and Inspection of Articles and Bylaws.....5160

### DIRECTORS AND MANAGEMENT

1. General Provisions .....5047, 5210-5215
2. Composition, Selection, Removal and Resignation of Directors.....5220-5227, 5520-5527
3. Standards of Conduct of Directors .....5230-5239
4. Duties and Liabilities of Directors.....5230-5232
5. Self-dealing Transactions by Directors ..... 5233
6. Compensation of Directors.....5234

### MEETINGS AND VOTING

1. General Provisions .....5211, 5510-5517
2. Additional Provisions Relating to Election of Directors...5520-5527
3. Quorum.....5211
4. Voting of Memberships..... 5610-5617
5. Board Meeting Minutes.....6320

# RESOURCES

This section assists crisis nursery providers and/or their board members in locating organizations that provide publications, training and technical assistance to nonprofit organizations.

BoardSource
Suite 900
1828 L St. N.W.
Washington, DC 20036-5104
Phone: 202-452-6262
Fax: 202-452-6299
www.boardsource.org
*Provides publications, workshops and information on developing effective boards*

***Nonprofit* GENIE**
An online resource for California Nonprofits at www.genie.org.
*Quick and easy-to-use information and resources on fundraising, boards, grantmakers and more. This web site is a project of the California Management Assistance Partnership & Support Center for Nonprofit Management.*

# *Index of Questions and Answers*


Page

**Corporations**

How is a nonprofit corporation formed? ..... 1
What are Articles of Incorporation? ..... 1
What are Bylaws? ..... 2
Where do I keep my Articles of Incorporation and Bylaws? ..... 2
What is a Board of Directors? ..... 2

**Board of Directors Duties**

If I have seven board members, how many can be "interested persons"? ..... 6
What can be done to prevent the board of directors from having too many "interested persons"? ..... 6
Is a director considered an "interested person" if they receive reimbursement for actual costs incurred while performing their duties as directors? ..... 6
What happens when an unfair self-dealing transaction occurs? ..... 8
How do I know if staff are paid fairly? ..... 8
Can a board ever approve a self-dealing transaction? ..... 8
What is "Due Diligence"? ..... 9
What are some other examples of transactions that may be improper? ..... 10

**Board of Directors Meetings**

Where can board of directors meetings be held? ..... 11
How many votes are required for a decision of the board to be official? ..... 11
Must we keep minutes of our board meetings? ..... 11
Must we keep minutes of committee meetings? ..... 12
Who can take the minutes? ..... 12

**Officers**

Can one person serve as the Secretary and Treasurer? ..... 12

**Board of Directors Best Practice Guidelines**

What orientation methods can be used to familiarize potential and new members to the board and the agency? ..... 13
What are some strategies for creating and keeping a strong board? ..... 13
What are some strategies for effective, productive board meetings and involved board members? ..... 14
How can the board meet its duty to review licensing reports, financial reports, and incident reports at the meetings? ..... 14
How can the board ensure that the agency follows California Department of Social Services (CDSS) regulations? ..... 14
What other practices should board members consider? ..... 15

# Index of Questions and Answers

Page

**Overview of Community Care Licensing and of Licensing Requirements**

Who is Community Care Licensing? ..... 17
How does the licensing agency monitor compliance? ..... 17
What can happen if a licensee violates licensing requirements? ..... 18
How does the corporation become a licensee? ..... 18
When can the facility begin operating?..... 19
As a board member, am I responsible for the facility's day-to-day operation?..... 19
Where can I get copies of licensing evaluation reports? ..... 19
What if we have to move to another location or we want to add another facility?..... 19

**STATE OF CALIFORNIA**

**HEALTH AND HUMAN SERVICES AGENCY**

**DEPARTMENT OF SOCIAL SERVICES**

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